IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.4351 OF 2005
IN
CRIMINAL APPEAL NO.644 OF 2005

Tambi alias Saloman Benadic Anthony — Applicant-Accused

vs.

The State of Maharashtra — Respondent

Mr.Rahul S. Kate for the applicant.

Mr.S.S.Pednekar, APP for the State.

CORAM : SMT. RANJANA DESAI &
SHRI ANOOP V. MOHTA, JJ.

DATED : 13th October 2005

P.C.

The applicant was tried for the offence punishable under Section 302 of IPC. He was convicted for the said offence and sentenced to suffer life imprisonment. The appeal has been admitted. We are considering the bail application.

2. We have heard the learned counsel for the applicant. He points out that though the incident in question took place on 10.9.2003, the brother of the deceased has lodged the F.I.R. on 20.9.2003 i.e. after the death of the deceased on 18.9.2003. The learned counsel submitted that the delay in lodging the F.I.R. makes the prosecution story suspicious. He submitted that in fact the deceased sustained injuries because he fell on

rickshaw. The injuries are result of the impact of the rickshaw. The Doctor who has been examined by the prosecution has stated that injuries are possible by the impact of the rickshaw. Besides, P.W. 6 - Somnath Nimbalkar, the rickshaw driver has also stated that the deceased fell on the rickshaw. In the circumstances, the learned counsel urged that this is a fit case where the applicant should be released on bail.

3. Admittedly, the applicant was on bail during trial. P.W.1-Dnyaneshwar S. Kshirsagar, brother of the deceased has lodged F.I.R. 10 days after the incident. Prima facie, we feel that if he had seen the applicant assaulting the deceased he would have rushed to lodge the F.I.R. immediately. Delay in lodging the F.I.R., in our prima facie opinion, makes a dent in the prosecution story. Besides, it does appear from the evidence that the deceased fell on the rickshaw. Therefore, the defence version that injuries were received by the deceased on account of fall on the rickshaw is probable. We are, therefore, of the opinion that this is a case where the applicant should be released on bail. Hence, the following order.

O R D E R

(i) The Applicant-Tambi alias Saloman Benadic Anthony is ordered to be released on bail in

the sum of Rs.10,000/- with one or two sureties in the like amount.

(ii) The applicant shall report to Daund Police Station once in a month while on bail.

4. Application disposed of in the aforesaid terms.

(SMT. RANJANA DESAI,J.)

(ANOOP V. MOHTA, J.)